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89TH CONGRESS, 1st Session } SENATE { REPORT No. 387

INTERSTATE COMMERCE ACT AMENDMENTS

JUNE 30 (legislative day, JUNE 29), 1965.—Ordered to be printed

Mr. LAUSCHE, from the Committee on Commerce, submitted the following

REPORT

[To accompany S. 1727]

The Committee on Commerce to whom was referred the bill (S. 1727) to provide for strengthening and improving the national transportation system, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

INTRODUCTION

S. 1727 contains provisions to strengthen enforcement efforts against illegal carriage and to require motor carriers and freight forwarders to pay reparations to shippers charged unlawfully high rates.

Public hearings were held before the Surface Transportation Subcommittee on May 10, 11, 14, 19, and 20, 1965. A similar bill, S. 2560, was passed by the Senate in the 87th Congress. In the 88th Congress, the committee tentatively voted to report S. 2796, a bill with similar provisions, but no further action was taken. H.R. 5401, containing many of the same provisions, passed the House on May 6, 1965.

NEED FOR PROPOSED LEGISLATION

Illegal transportation is a major problem requiring action by Congress. Illegal transportation is big business. The Interstate Commerce Commission, on the basis of road checks in 42 States, has estimated that it involves a minimum of $500 million a year. Other experts feel the cost of illegal transportation is even higher, amounting to from $1 to $5 billion a year. These experts base this higher estimate on the obvious shortcomings of the 42 State road checks in which many of the illegal carriers escaped detection.

While the annual cost of a billion dollars or more is a direct measure of the revenue lost by the regulated carriers, both truckers and railroads, to illegal transportation, the problem is more serious than that.

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The loss is serious in terms of the common carrier industry because these carriers are the backbone of our national transportation industry. These regulated carriers are of crucial importance because of their public interest obligation to serve all of the public, in virtually every community in America, in good weather and in bad, and in good times and in bad. Without common carriers with a universal obligation to serve, transportation would quickly deteriorate into a means of promoting the economic activity of a few. The public interest requires that we protect these carriers against the abuses of illegal carriers who assume no public responsibility.

The presence of highway poachers also penalizes the shipper, the community, and the public more directly. The illegal operator often evades tax laws as well as transportation laws, and the law abiding must pay the difference. The public also pays more for goods, because freight moved illegally takes revenues from the lawful common carriers, causing their rates to be raised to pay the fixed operating costs of labor, maintenance, and equipment. Furthermore, the evidence to date indicates that illegal truckers are far more prone to highway accidents than are the lawful operators.

This problem has been called the "gray area" of transportation. This is a misnomer. The problem is black and not gray. It arises from illegal transportation, although such illegal operations are frequently masked under various disguises and facades to give them the appearance of legality.

Combating illegal carriage is not an easy task, and even with new enforcement tools, the illegal operator will not be driven off the highways. S. 1727 would muster new weapons in this legal fight against unlawful carriage. It would increase the penalties for unlawful transportation activities, ease some of the legal burdens which handicap the enforcement efforts of the Interstate Commerce Commission, and provide new means of legal recourse for those damaged by illegal operations. Furthermore, S. 1727 would clear the way for improved enforcement cooperation between the Interstate Commerce Commission and the various State commissions.

Federal-State cooperation, with primary emphasis on State action, is a sound and effective means of proceeding. The States share with the Federal Government an equal interest in fighting illegal carriage. Only a cooperative, coordinated enforcement effort can end illegal carriage.

Section 1 of S. 7127 would authorize the ICC to enter into cooperative agreements with the States to enforce Federal and State regulations concerning highway transportation. The rapid growth of communication between the ICC and the States would improve enforcement. Section 2 of S. 1727 would assist in the complete implementation by the States of existing operating authority registration statutes. While multistate carriers could comply with uniform standards of registration in a relatively simple operation, the illegal interstate carrier could be subject to State penalties for failure to register.

The approach embodied in S. 1727 has won solid and widespread support from virtually all segments of our highly competitive transportation system. S. 1727 is supported by, among others, the National Association of Railroad and Utilities Commissioners, the Transportation Association of America, the U.S. Chamber of Commerce, the American Trucking Association, the Association of Amer-

ican Railroads, the Interstate Commerce Commission, and the Department of Commerce.

The enactment of S. 1727 would be an effective, positive step toward ending the problem of illegal transportation, and thereby strengthening and improving our national transportation system.

Amendments Adopted by the Committee

In section 2, page 2, line 17, delete the word "commissioners" and insert the word "commissions."

This amendment is to correct a typographical error.

In section 2, page 3, line 4, insert after insurance and before the comma the words: "or qualifications as a self-insurer under rules and regulations of the Commission".

This amendment is to provide for situations where motor carriers may be self-insurers.

In section 3, page 4, delete beginning on line 20 and ending on line 23, the following: "; or who shall fail or refuse to comply with any rule, regulation, requirement, or order promulgated by the Commission pursuant to the provisions of section 204(a)(1), 204(a)(2), 204(a)(3), or 204(a)(3a)."

This amendment deletes the provisions providing for civil forfeiture fines for safety violations. The committee did not believe such fines should be made applicable to violations of such safety provisions at this time inasmuch as the Commission's regulations include both major and minor infractions.

In section 3, page 5, line 2, delete the following words: "continue: *Provided, however,* That nothing in this section shall deprive the Commission of its primary jurisdiction to determine the validity of an operation in dispute under the primary business test" and insert "continue.".

This amendment is to delete a proviso which the committee considered to be unnecessary as civil forfeiture suits would be initiated by the Commission.

In section 4, page 5, line 12, after the word "part" and before the comma, insert the following: "(except as to the reasonableness of rates, fares, charges and the discriminatory character thereof)."

This amendment is to correct the inadvertent omission of an exception clause which is in the existing law.

In section 4, page 6, line 15, after the word "person" and before the word "operates" on line 18, delete the following: "(not including a motor carrier holding a certificate, permit, or grant of temporary authority issued by the Commission under the provisions of section 206, 207, 208, 209, or 210a of this part)."

This amendment is to delete an exception clause which the committee considers unnecessary as these suits may only be brought against persons whose operations are clearly and patently in violation.

In section 4, page 6, line 19, strike "section 203(a)" and insert "section 203(c)."

This amendment is to correct a typographical error.

In section 4, page 7, line 19, strike the whole sentence beginning with the word, "Nothing", and ending on line 25, and insert in lieu thereof a new paragraph as follows:

> (3) In any action brought under subsection (b)(2) of this section, the Commission may notify the district court of the

United States in which such action is pending that it intends to consider the matter in a proceeding before the Commission. Upon the filing of such a notice the court shall stay further action pending disposition of the proceeding before the Commission.

This amendment is to delete an exception clause which the committee considers unnecessary as these suits may only be brought against persons whose operations are clearly and patently in violation. This amendment is also to add a new paragraph to permit the Interstate Commerce Commission to notify the courts that the Commission wishes to decide initially a case prior to further court action.

Section-by-Section Analysis of the Bill

ENFORCEMENT AGREEMENTS WITH STATES ON HIGHWAY TRANSPORTATION

Section 1: This section amends subsection (f) of section 205 to authorize the Interstate Commerce Commission to enter into cooperative agreements with the several States to enforce State and Federal economic and safety laws relating to highway transportation. Section 205(f) authorizes the Commission, among other things, to avail itself of the cooperation, services, records, and facilities of State authorities in the enforcement or administration of the provisions of part II. Section 1 of this bill would amend section 205(f) of the act so as to specifically authorize the Commission to reciprocate by entering into cooperative agreements with the States to enforce State and Federal economic and safety laws and regulations concerning highway transportation.

The enactment of this section would be of substantial assistance in curbing illegal operations by persons operating motor vehicles for hire without required certificates or permits.

It is the intention of the committee under section 205(f) of the Interstate Commerce Act (as amended by this legislation) that the Interstate Commerce Commission be empowered to enter into agreements with the States under which information concerning violations of State laws and regulations which has come to the attention of the Commission during the course of official examinations or inspections can be communicated to the States, notwithstanding the provisions of section 222(d).

UNIFORM STATE REGISTRATION OF MOTOR CARRIER CERTIFICATES

Section 2: This section amends section 202(b) of the act to provide for the establishment of standards for the registration within the several States of certificates and permits issued to motor carriers by the Interstate Commerce Commission. The term "standards" is defined in section 2 of this bill to mean specifications of forms and procedures required to evidence the lawfulness of interstate operations of a carrier within a State by (a) filing and maintaining current records of the certificates and permits issued by the Commission, (b) registering and identifying vehicles as operating under such certificates and permits, (c) filing and maintaining evidence of currently effective insurance, or (under a committee amendment) qualifications as a self-insurer under rules and regulations adopted by the Commission,

and (d) filing designations of local agents for service of process. To the extent warranted by differences in their operations, different standards for each of the classes of carriers would be authorized. Five years following their promulgation, the standards would go into effect, and thereafter, State requirements in excess of those promulgated would constitute an undue burden on interstate commerce.

The National Association of Railroad and Utilities Commissioners would have the primary and exclusive right to determine the standards. This section also provides that in the event the National Association fails to determine and certify to the Commission such standards within 18 months, or should it withdraw in their entirety standards previously determined, the Commission then would be required to prescribe standards.

The section further provides that nothing contained in it shall be construed to deprive the Commission, when there is a reasonable question of interpretation or construction, of its jurisdiction to interpret or construe certificates of public convenience and necessity, or permits, or rules and regulations issued by the Commission, nor to authorize promulgation of standards in conflict with any rule or regulation of the Commission.

At present, registration requirements differ widely among the States; this circumstance alone may impose undue burdens on carriers. Enactment of this section is necessary in order that relief from this multiplicity of different State registration requirements be achieved.

Equally important, this section would assist in the complete implementation by the States of existing operating authority registration requirements. In recent years, an ever-increasing number of States have required interstate carriers to register with the States the operating authority issued by the Interstate Commerce Commission. This action by a growing number of States gives every indication of developing as an essential element in the curbing of those who operate outside of the law. The Committee has approved this section in order that States can use such registration laws to intensify State enforcement activities against illegal carriers. A carrier operating without Interstate Commerce Commission authority will, of course, have no authority to register with a State. Thus, if a State requires registration, an unauthorized carrier can be prosecuted by the State for violation of the State registration law. In this way, illegal interstate operators can be restrained by State authorities. The use of uniform registration standards should also assist in the discovery and prosecution of the illegal operator.

INCREASED CIVIL PENALTIES

Section 3: This section amends section 222(h) so as to extend the civil forfeiture provisions therein to unlawful operations by motor carriers.

In addition, the maximum amount of forfeiture for any offense covered by this section would be increased from $100 to not to exceed $500, and in the case of a continuing violation, the maximum forfeiture which could be imposed for each additional day in which the offense continued would be increased from $50 to not to exceed $250.

The procedures under existing law for dealing with certain motor carrier violations are often slow and cumbersome, and sometimes ineffective. Criminal prosecutions, for example, must be brought in

the district in which the violations occur. Civil forfeiture proceedings however, may be instituted in the district in which the carrier maintains its principal office, where it is authorized to operate, or where it can be found. Less time would be needed for investigating violations because of the difference in quantum of proof required in such proceedings.

Under the proposed amendment a civil forfeiture action could be brought against a for-hire motor carrier for transporting property without a required certificate or permit. Such action would be available whether or not the carrier had taken steps to give the operation an appearance of legality.

Since the quantum of proof required in a civil forfeiture proceeding is not as great as that required in a criminal action, a substantial amount of the time that must now be spent in preparing for criminal prosecutions in such cases could be devoted to handling a larger number of cases under the recommended forfeiture procedure.

The committee amended section 3 in two respects. In the first place, the committee deleted a "primary business proviso" at the end of the section. Inasmuch as the Commission would be initiating the forfeiture action, the committee believed that the proviso was surplusage and should be omitted.

Secondly, the committee deleted language extending civil forfeiture fines to safety violations. The committee recognizes that safety regulation compliance has been a problem with respect to those who do not otherwise comply with the law, and that civil forfeiture fines would be helpful to the Commission in the important area of motor carrier safety. It was pointed out to the committee, however, that as presently written the Commission's rules and regulations number in the hundreds and include not only major infractions but also comparatively minor infractions such as burned out side marker lights. In view of this, the committee determined at this time not to extend civil forfeiture fines to violations of the Commission's safety rules and regulations. Should the Commission revise its rules and regulations to separate major from minor infractions, the committee might look with favor upon the inclusion in this section of such separate safety rules and regulations.

SERVICE OF PROCESS AND CIVIL SUITS FOR ENFORCEMENT OF INTERSTATE COMMERCE ACT

Section 4: Section 4 amends section 222(b) to broaden the provisions thereof so as to enable the Interstate Commerce Commission to obtain service of process upon motor carriers or brokers and to join other necessary parties without regard to where the carrier or other party may be served. At present, the Federal Rules of Civil Procedure (4f) limit the service of process in such proceedings to the territorial limits of the State in which the court sits.

Many of the carriers against whom it is necessary to seek injunctions do not hold operating authority from the Commission, and, of course, have not designated an agent for the service of process under section 221(c) of the act. In other instances the Commission has not been able to obtain service of process upon both the carriers and the shipper because they were not located within the territorial limits of the same State.

Section 4 also adds to section 222(b) a new paragraph providing that any person who is injured as a result of an operation by another person in clear and patent violation of the operating authority provisions of section 203(c), 206, 209, or 211, or any rule, regulation, requirement, or order thereunder, may apply directly to a district court of the United States for an injunction to restrain such violations. Presently, only the Commission or its duly authorized agent may seek injunctive relief for violation of these provisions.

To protect the interests of the party or parties against whom injunctive relief is sought, it is provided that the party instituting the action would be required to post bond. In addition, the party that prevailed could, in the discretion of the court, recover reasonable attorney's fees together with costs allowable under the Federal Rules of Civil Procedure. The Commission would be served with notice of any action for relief and could appear therein as a matter of right.

The purpose of this new paragraph is to afford injured parties a measure of self-protection against operations which are openly and obviously unlawful. The words " clear and patent" are intended as a standard of jurisdiction rather than a measure of the required burden of proof. No district court is to entertain any action except where the act complained of is openly and obviously for-hire motor carriage without authority under the sections enumerated. The language of section 4 is intended to make it clear that the courts would entertain only those suits which involve obvious attempts to circumvent operating regulation.

The committee deleted the last paragraph of this section because, in our opinion, the language is unnecessary in view of the "clear and patent" jurisdictional limitation embodied in this section. The committee believed that it would defeat the purpose of this provision to include language which some witnesses construed as indicating a congressional intent to require all enforcement actions involving unlawful operations to be first considered by the Commission.

The committee added to section 4 an additional subsection which provides:

> (3) In any action brought under subsection (b)(2) of this section, the Commission may notify the district court of the United States in which such action is pending that it intends to consider the matter in a proceeding before the Commission. Upon the filing of such a notice, the court shall stay further action pending disposition of the proceeding before the Commission.

The committee is of the opinion that this language would provide adequate protection for carriers who fear that the Commission might be deprived of the opportunity to decide initially cases involving important issues of transportation law or policy.

MOTOR CARRIER REPARATIONS

Section 5: This section amends section 204(a) of the act so as to permit shippers to recover reparations from motor carriers for up to 2 years after the cause of action thereof arises. This section would permit a court of competent jurisdiction to award reparations to persons injured through violations of the Interstate Commerce Act by motor carriers subject thereto. Reparations are charges made for

transportation in accordance with filed tariffs to the extent that the Interstate Commerce Commission subsequently finds them to have been unjust and unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial.

This section would restore a procedure formerly available to shippers which was set aside by the Supreme Court in 1959 by its decision in the *T.I.M.E.* case (359 U.S. 464). This would be accomplished in accordance with established judicial reference procedures under which the Commission would be called upon to aid the court by making necessary administrative determinations relating to the amount of reparations.

In *Bell Potato Chip Co.* v. *Aberdeen Truck Line*, 43 M.C.C. 337 (1944), decided prior to the *T.I.M.E.* case, the Commission stated that complaints seeking reparations should not be filed with it "prior to the institution of a suit in court (p. 343)." In granting a right of action to shippers to recover reparations, the committee intends that those seeking reparations must file a court complaint before seeking the Commission's administrative determination.

There are reparations provisions now in effect in part I of the act (relating to railroads) and part III of the act (relating to water carriers).

FREIGHT FORWARDER REPARATIONS

Section 6: This section contains companion provisions to section 5, amending section 406(a) of the act so as to permit shippers to recover reparations from freight forwarders for up to 2 years after the cause of action thereof arises.

AGENCY COMMENTS

The Commission's justifications for recommenations No. 21 and 22 of its 78th annual report follow. Recommendation No. 21 is embodied in section 4(1) of S. 1727. Recommendation No. 22 is embodied in section 3 of S. 1727. Included also are the Comptroller General's comments, and the comments of the Interstate Commerce Commission on the differences between S. 1727 and H.R. 5401.

Recommendation No. 21

JUSTIFICATION

The attached draft bill would provide the Interstate Commerce Commission with a more effective means of enforcing the motor carrier provisions of the Interstate Commerce Act.

Under section 222(b) of the act the Commission is authorized to institute proceedings to enjoin unlawful motor carrier or broker operations or practices in the U.S. district court of any district in which the carrier or broker operates. Rule 4(f) of the Federal Rules of Civil Procedure, however, limits the service of process in such proceedings to the territorial limits of the State in which the court sits.

In many instances the carriers against whom it is necessary to seek injunctions do not hold operating authority from the Commission and they have not, of course, designated an agent for the service of process as provided in section 221(c) of the act. The operations of such carriers are frequently

widespread and it is often desirable to institute the court action in the State where most of their services are performed. This is usually the most convenient place for the majority of persons involved, including necessary witnesses. The illegal operator, himself, however, may avoid service of process by remaining outside of the State and by not stationing within its borders anyone qualified to receive service on his behalf.

Coping with the problem of unlawful operations is further complicated when a large shipper is involved. An injunction against one or several relatively small carriers without the shipper being named permits the shipper to continue his unlawful activities by using individual truckers or small carriers against whom no previous action has been taken. It is therefore frequently desirable and often critically important, that such shipper, as well as the carriers, be enjoined from participating in further violation of the law or the Commission's rules and regulations thereunder. In some instances, however, the Commission has been unable to obtain service of process upon both the carriers and the shipper because they were not located within the territorial limits of the same State.

The decision of the court in *Interstate Commerce Commission* v. *Blue Diamond Products Company*, 192 F. 2d 43, precludes the Commission from proceeding against a shipper without proceeding against the carrier. The Commission does not disagree with the principle of that case. However, it is of the view, and the draft bill would so provide, that it should be able to institute a civil action against a carrier in any State in which the carrier operates and to join in such action any shipper, or any other person participating in the violation, without regard to where the carrier or the shipper or such other person may be served.

The problem presented has been particularly troublesome in the efforts of the Commission to control so-called pseudo private carriage, i.e., for-hire carriers claiming, without basis, to be engaged in private transportation for the purpose of evading the economic regulation to which common and contract carriers are subject. The seriousness of these unlawful operations was recognized by the Congress when, as a part of the Transportation Act of 1958, it amended section 203(c) of the Interstate Commerce Act so as to more clearly define what constitutes bona fide private carriage. However, because of the inability of the Commission, under present law, to get both the responsible shipper and the carrier before the court, its efforts at effective enforcement is, in many cases, thwarted.

The proposed amendment would make more effective the original intent of the Congress in enacting section 222(b) and would aid the Commission substantially in its efforts to administer and enforce the act.

In order to make the provisions of section 222(b) harmonize with changes recommended by the Commission in section 212(a) of the act (see legislative recommendation No. 25, 78th annual report), the draft bill further provides that

section 222(b) shall apply to any lawful rule, regulation, requirement, or order promulgated by the Commission. At present, the pertinent provision of section 222(b) refers only to rules, regulations, requirements, or orders promulgated under part II of the act.

(Recommendation No. 22)

JUSTIFICATION

The purpose of the attached draft bill is to provide the Interstate Commerce Commission with a more effective means of coping with the spread of illegal and so-called gray area motor carrier operations which are undermining the strength of the Nation's regulated common carrier system. It is also designed to buttress the Commission's intensified motor carrier safety enforcement program.

Under existing law, procedures for dealing with certain motor carrier violations are often slow and cumbersome, and frequently ineffective. Criminal prosecutions, for example, must be brought in the district in which the violations occurred. Thus, in the case of multiple violations by a carrier with extensive territorial operations it may be necessary to institute separate actions in several district courts if all of the violations are to be covered. Civil forfeiture proceedings, on the other hand, may be instituted in the district in which the carrier maintains its principal office, where it is authorized to operate, or where it can be found. Moreover, less time is needed for investigating violations because of the difference in quantum of proof required in such proceedings.

Under the proposed amendment a civil forfeiture action could be brought against a for-hire motor carrier for transporting property without a required certificate or permit. Such action would be available whether or not the carrier had taken steps to give the operation an appearance of legality, but the principal enforcement advantage that would accrue would be when the operator, by means of an alleged vehicle lease or an alleged purchase of the commodity hauled, has attempted to give the operation an appearance of private carriage. More specifically, an owner of a vehicle may enter into a vehicle lease arrangement with a manufacturer under which the manufacturer allegedly uses the vehicle in private carrier operations. Such arrangements range all the way from a bona fide lease of a vehicle, at one extreme, to an obvious sham at the other. No enforcement action is, of course, involved in the case of a bona fide lease. The obvious shams, however, are the subject of criminal prosecution.

While there are a number of vehicle arrangements which the Commission believes to be illegal for-hire carriage by the vehicle owner, it is doubtful that a criminal conviction could be secured because of the necessity of showing knowledge and willfulness and proving guilt beyond a reasonable doubt. In addition, in a criminal proceeding there can be no appeal from an acquittal. Such cases are now handled

in the civil courts, but an injunction against such operations in the future is all that can be secured. The possibility of a civil injunction action, where there is no pecuniary penalty or criminal stigma involved, has very little effect as a deterrent to would-be violators. A civil forfeiture action, such as that proposed, carrying with it substantial monetary penalties should, on the other hand, have a strong deterrent effect against questionable leasing arrangements.

Operations sometimes referred to as "buy and sell" operations are very similar in effect. By allegedly purchasing merchandise the transporter represents the operation to be private carriage. As in the case of leasing arrangements these operations have many variations, some of which present close questions as to whether the operation constitutes for-hire carriage. Some are obviously illegal for-hire operations and are handled as criminal cases. Others, however, are not so clearly unlawful as to warrant criminal action for the reasons stated above in connection with questionable leasing arrangements, but which, in the Commission's views, are nevertheless unlawful. Such operations may be continued for substantial periods during the pendency of a civil injunction proceeding and before a cease-and-desist order is issued by the court. If the proposed amendment were enacted a number of these cases could be made the subject of a civil forfeiture action in which, if successful, the operator would suffer a money judgment or forfeiture.

Enactment of the proposed legislation would also greatly facilitate the Commission's enforcement activities in the important area of motor carrier safety. Although a very high percentage of cases involving violations of the Commission's safety regulations are disposed of by pleas of guilty or nolo contendere, investigations looking toward such prosecutions are nevertheless extremely time consuming because of the necessity of proving to the court every element of the alleged criminal offense. Since the quantum of proof required in a civil forfeiture proceeding is not as great as that required in a criminal action, a substantial amount of the time that must now be spent in preparing for criminal prosecutions in such cases could be devoted to handling a larger number of civil forfeiture proceedings.

The Commission's efforts at more effective and expeditious enforcement would also be greatly enhanced if it were authorized to institute forfeiture proceedings directly in the courts instead of proceeding through the Department of Justice as it is now required to do. Delays would be avoided not only by eliminating the mechanics involved in taking the extra step, but also by the elimination of such delays as may be caused by the time consumed in convincin the U.S. attorney that an action should be filed.

These proposed amendments, coupled with a substantia increase in the amount of the forfeitures prescribed, wou strengthen the Commission's hand considerably in dealing with some of the principal factors contributing to the decline of regulated common carriers.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., May 6, 1965.

B–104930.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: We have your letter of April 19, 1965, asking for our comments on S. 1727.

S. 1727 contains (1) provisions designed to afford the Interstate Commerce Commission additional authority and power to reduce illegal carriage, and (2) provisions for the recovery of reparations from motor carriers and freight forwarders.

The provisions to aid in combating illegal transportation would not, if enacted, materially affect the functions and operations of our Office. Since they seem to be in the public interest, we have no objection to their receiving favorable consideration by your committee. Several of these provisions have already been proposed in substantially similar form: for example, the proposal to increase civil penalties (sec. 3 of S. 1727) was made in S. 1733, introduced on April 6, 1965. S. 1733 differs in the dollar amount of the penalties; it would increase the penalties prescribed in subsection 222(h) of the Interstate Commerce Act, 49 U.S.C. 322(h), only to $200 for each offense and $100 for each additional day that the violation continued, as against $500 and $250, respectively, in the present bill. In our letter of April 19, 1965, B–120670, we reported favorably on S. 1733.

The first part of section 4 of S. 1727, which would amend section 222(b) of the act, 49 U.S.C. 322(b), relating to service of process and enforcement against motor carrier violators and persons acting in concert with them, is similar to S. 1728, as to which we said we had no objections in our letter dated April 19, 1965, B–120670.

The provisions in S. 1727 concerning motor carrier and freight forwarder reparations are of particular interest to us. Since the Supreme Court in *T.I.M.E., Inc.* v. *United States*, 359 U.S. 469 (1959), invalidated the procedure for obtaining such reparations, upon a determination of unreasonableness by the Interstate Commerce Commission in a proceeding ancillary to a court action for their recovery, we have consistently recommended amendment of the Interstate Commerce Act to give shippers the same rights against motor common carriers and freight forwarders which the act affords against rail carriers subject to part I.

We note that the provisions in S. 1727 are considerably abbreviated as compared to those in S. 1732, a bill which proposes detailed and specific provisions to permit the recovery of damages for violations of parts II and IV; S. 1727 defines "reparations" and authorizes recovery of such reparations rather than "damages" for violations, as in related sections of the Interstate Commerce Act covering rail and water carriers. Our support for S. 1732 is reflected in our letter to you on April 22, 1965, B–120670.

While the more detailed provisions contained in S. 1732 are like those which have been in effect for many years in the case of railroads and thus are subject to established legal principles, the method for obtaining reparations indicated in S. 1727 is not objectionable, since in effect it reinstates the practice prevailing before the above *T.I.M.E.* case. We suggest that the procedure to be thus afforded does not

seem as economical or expeditious as that proposed in S. 1732, but if S. 1732 is not to be enacted, we feel that passage of S. 1727, insofar as the reparations provisions are concerned, would represent a significant achievement in giving shippers a basis for needed relief and in equalizing remedies against the several types of interstate carriers for the recovery of unreasonable or otherwise unlawful charges.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

JUNE 1, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR CHAIRMAN MAGNUSON: Your request, dated May 12, 1965. for our comments on the differences between S. 1727 and H.R. 5401, as passed the House, has been referred to our Committee on Legislation. On its behalf I am authorized to submit the following comments:

Section 2 of H.R. 5401 contains a provision which would require States to accept self-insurance qualifications approved by the Commission for interstate operations. Section 2 of S. 1727 does not contain a similar provision. We favor the provision in H.R. 5401 and we suggest that S. 1727 be amended to include such a provision.

Section 3 of S. 1727 differs from section 3 of H.R. 5401 as follows:

First, section 3 of S. 1727 would extend the civil forfeiture provisions of the act to safety violations by motor carriers under section 204(a) (1), (2), (3), and (3a) of the Interstate Commerce Act. Section 3 of H.R. 5401 would not extend such provisions to safety violations. The Commission favors section 3 of S. 1727, because it would enable the Commission to obtain more effective compliance with its safety regulations. In this regard, although the Commission would prefer a mandatory fine under section 3 of S. 1727, we do not oppose the provision "not to exceed $500" provided it applies to safety violations as well as unlawful operations.

Secondly, section 3 of 1727 contains a "primary business test proviso" which is not contained in H.R. 5401. We oppose the "primary business test proviso" because, inasmuch as the Commission would be initiating the forfeiture action, it seems to us that the proviso is surplusage. Thus, we believe that section 3 of H.R. 5401 properly omits the proviso in question.

Section 4 of S. 1727 contains a provision relating to service of process which is identical to section 4 of H.R. 5401. Section 4 of S. 1727, also contains a provision relating to civil suits for enforcement of the Interstate Commerce Act, which is similar to section 5(a) of H.R. 5401. These provisions differ in that section 4 of S. 1727 contains a primary business test proviso in lines 23 through 25 on page 7 which is not included in H.R. 5401. We oppose the primary business test proviso because, in our opinion, it is unnecessary in view of the "clear and patent" jurisdictional limitation embodied in this section. Our fear is that the courts might construe this unnecessary clause as some indication of congressional intent to require that all enforcement actions involving unlawful operation must first be considered by the Commission.

Section 5(a) of H.R. 5401 contains an additional subsection (3) which does not appear in section 4(b) of S. 1727. This subsection provides:

"(3) In any action brought under subsection (b)(2) of this section, the Commission may notify the district court of the United States in which such action is pending that it intends to consider the matter in a proceeding before the Commission. Upon the filing of such a notice the court shall stay further action pending disposition of the proceeding before the Commission."

We feel that this language would provide adequate protection for carriers who fear that the Commission might be deprived of the opportunity to decide initially cases involving important issues of transportation law or policy. Therefore, we recommend that section 4 of S. 1727 be amended to conform with paragraph (a) of section 5 of H.R. 5401 by deleting the primary business test proviso and by substituting, in lieu thereof, the language of subsection (3) of section 5(a) of H.R. 5401, quoted above.

Section 5(b) of H.R. 5401 extends the remedy provided by section 5(a) to freight forwarders. S. 1727 does not contain any comparable provision. We are authorized to state that the Commission has no objection to section 5(b) of H.R. 5401, in view of the provision that the Commission may notify a court that it intends to consider the matter in dispute and that, upon such notice, the court shall stay further action pending disposition of the proceeding by the Commission.

Section 8 of H.R. 5401 provides for revocation of dormant water carrier certificates and permits and provides for free entry of water carriers over routes or between ports for which a certificate is not in effect. No similar provision appears in S. 1727.

Section 8(a)(1) of H.R. 5401 would add a new section to part III of the Interstate Commerce Act which would authorize the revocation of water carrier certificates and permits under certain circumstances. Paragraphs (1) and (2) of the proposed new section are identical to S. 1143 which would implement legislative recommendation No. 4 in the Commission's 78th annual report. These provisions would authorize the Commission to revoke any water carrier certificate or permit "in whole or in part, for willful failure to engage in, or to continue to engage in the operation authorized by such certificate or permit." We wish to point out that even though the Commission may be given the power to revoke a certificate or permit "in part" we would not do so unless there was reason to believe that such willful failure to operate would continue indefinitely. Accordingly, we support paragraphs (1) and (2) of H.R. 5401.

Section 8(a) of H.R. 5401, subsection (3), also provides that the Commission shall revoke a certificate, in whole or in part, for willful failure to engage in any operation authorized by any such certificate for a period of 3 or more years, whether occurring before or after the date of enactment. Revocation under this provision would be mandatory. In our opinion, this is undesirable since, in some instances, extenuating circumstances may exist which would justify the exercise of discretion by the Commission. For this reason we prefer that the proposed mandatory revocation provision not be added to S. 1727.

Under subsection (b) of section 8 of H.R. 5401, a water carrier would not be required to obtain a certificate in order to engage in transportation over any route or routes or between ports for which no certificate is in effect. This subsection also prohibits issuance of certificates authorizing such service after the date of enactment. It further provides that all service performed under the proposed "free entry" provision shall be deemed to be that of a common carrier.

The exercise of rate controls over uncertificated water carriers might create some administrative problems, but we do not regard such problems as insuperable or a sufficient cause, standing alone, to oppose enactment of section 8(b) of H.R. 5401. Our primary concern is that the decertification provisions of H.R. 5401 would tend to curb the growth of water carriers, especially coastal and intercoastal carriers.

Water carriers generally do not provide service to a port or over a route unless there is sufficient cargo to justify such service. Occasionally, when a carrier loses a shipper's business, it becomes necessary to discontinue such service temporarily. If the Commission were required to revoke part of a certificate because of temporary discontinuance of operations for more than 3 years, then upon such revocation any water carrier could provide service to that port. In addition, initial rates filed by these noncertificated carriers could not be suspended by the Commission. This could result in many undesirable rate practices which part III of the act is designed to prevent. We are directed to state, on behalf of the Commission, that the Commission does not favor section 8(b) of H.R. 5401 and, in the event that the committee desires to deal with the problem of dormant water carrier certificates and permits in S. 1727, the Commission recommends favorable consideration of the language embodied in S. 1143.

Respectfully submitted.

CHARLES A. WEBB,
Chairman, Committee on Legislation.
LAURENCE K. WALRATH.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERSTATE COMMERCE ACT
(Title 49, United States Code)

SEC. 202. (a) The provisions of this part apply to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce and to the procurement of and the provision of facilities for such transportation, and the regulation of such transportation, and of the procurement thereof, and the provision of facilities therefor, is hereby vested in the Interstate Commerce Commission.

(b)(*1*) Nothing in this part shall be construed to affect the powers of taxation of the several States or to authorize a motor carrier to

do an intrastate business on the highways of any State, or to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof.

(2) The requirement by a State that any motor carrier operating in interstate or foreign commerce within the borders of that State register its certificate of public convenience and necessity or permit issued by the Commission shall not constitute an undue burden on interstate commerce provided that such registration is accomplished in accordance with standards, or amendments thereto, determined and officially certified to the Commission by the national organization of the State commissions, as referred to in section 205(f) of this Act, and promulgated by the Commission. As so certified, such standards, or amendments thereto, shall be promulgated forthwith by the Commission and shall become effective five years from the date of such promulgation. As used in this paragraph, "standards or amendments thereto" shall mean specification of forms and procedures required to evidence the lawfulness of interstate operations of a carrier within a State by (a) filing and maintaining current records of the certificates and permits issued by the Commission, (b) registering and identifying vehicles as operating under such certificates and permits, (c) filing and maintaining evidence of currently effective insurance or qualifications as a self-insurer under rules and regulations of the Commission, and (d) filing designations of local agents for service of process. Different standards may be determined and promulgated for each of the classes of carriers as differences in their operations may warrant. In determining or amending such standards, the national organization of the State commissions shall consult with the Commission and with representatives of motor carriers subject to State registration requirements. To the extent that any State requirements for registration of motor carrier certificates or permits issued by the Commission impose obligations which are in excess of the standards or amendments thereto promulgated under this paragraph, such excessive requirements shall, on the effective date of such standards, constitute an undue burden on interstate commerce. If the national organization of the State commissions fails to determine and certify to the Commission such standards within eighteen months from the effective date of the paragraph, or if that organization at any time determines to withdraw in their entirety standards previously determined or promulgated, it shall be the duty of the Commission, within one year thereafter, to devise and promulgate such standards, and to review from time to time the standards so established and make such amendments thereto as it may deem necessary, in accordance with the foregoing requirements of this paragraph. Nothing in this paragraph shall be construed to deprive the Commission, when there is a reasonable question of interpretation or construction, of its jurisdiction to interpret or construe certificates of public convenience and necessity, or permits, or rules and regulations issued by the Commission, nor to authorize promulgation of standards in conflict with any rule or regulation of the Commission.

SEC. 204a. (1) All actions at law by common carriers by motor vehicle subject to this part for the recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.

(2) For *recovery of reparations, action at law shall be begun against common carriers by motor vehicle subject to this part within two years from the time the cause of action accrues, and not after, and for* recovery of overcharges, action at law shall be begun against common carriers

by motor vehicle subject to this part within three years from the time the cause of action accrues, and not after, subject to paragraph (3) of this section, except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

(3) If on or before expiration of the three-year period of limitation in paragraph (2) a common carrier by motor vehicle subject to this part begins action under paragraph (1) for recovery of charges in respect of the same transportation service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the carrier.

(4) The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after.

(5) The term "reparations" as used in this section means damages resulting from charges for transportation services to the extent that the Commission, upon complaint made as provided in section 216(e) of this part, finds them to have been unjust and unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial.

[(5)] *(6)* The term "overcharges" as used in this section shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Commission.

[(6)] *(7)* The provisions of this section shall apply only to cases in which the cause of action may accrue after the date of the enactment of this section.

[(7)] *(8)* The provisions of this section 204a shall extend to and embrace all transportation of property or passengers for or on behalf of the United States in connection with any action brought before any court or by or against carriers subject to this part: *Provided, however,* That with respect to such transportation of property or passengers for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U.S.C. 66), whichever is later.

SEC. 205. (a) * * *

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(f) The Commission is authorized to confer with or to hold joint hearings with any authorities of any State in connection with any matter arising in any proceedings under this part. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities as fully as may be practicable, in the enforcement or administration of any provision of this part. *In addition, the Commission is authorized to make cooperative agreements with the various States to enforce the economic and safety laws and regulations of the various States and the United States concerning highway transportation.* From any space in the Interstate Commerce Commission Building not required by the Commission, the Government authority controlling the allocation of space in public buildings shall

assign for the use of the national organization of the State commissions and of their representatives suitable office space and facilities which shall be at all times available for the use of joint boards created under this part and for members and representatives of such boards cooperating with the Commission or with any other Federal commission or department under this or any other Act; and if there be no such suitable space in the Interstate Commerce Commission Building, the same shall be assigned in some other building in convenient proximity thereto.

SEC. 222. (a) * * *

[(b) If any motor carrier or broker operates in violation of any provision of this part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply to the district court of the United States for any district where such motor carrier or broker operates, for the enforcement of such provision of this part, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto.]

(b)(1) If any motor carrier or broker operates in violation of any provision of this part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any lawful rule, regulation, requirement, or order promulgated by the Commission, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply for the enforcement thereof to the district court of the United States for any district where such motor carrier or broker operates. In any proceeding instituted under the provisions of this subsection, any person, or persons, acting in concert or participating with such carrier or broker in the commission of such violation may, without regard to his or their residence, be included, in addition to the motor carrier or broker, as a party, or parties, to the proceeding. The court shall have jurisdiction to enforce obedience to any such provision of this part, or of such rule, regulation, requirement, order, term, or condition by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its offices, agents, employees, and representatives, and such other person, or persons, acting in concert or participating with such carrier or broker, from further violation of such provision of this part, or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto. Process in such proceedings may be served upon such motor carrier, or broker, or upon such person, or persons, acting in concert or participating therewith in the commission of such violation, without regard to the territorial limits of the district or of the State in which the proceeding is instituted.

(2) If any person operates in clear and patent violation of any provisions of section 203(c), 206, 209, or 211 of this part, or any rule, regulation, requirement, or order thereunder, any person injured thereby may apply to the district court of the United States for any district where such person so violating operates, for the enforcement of such section, or of such rule, regulation, requirement, or order. The court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other

process, mandatory or otherwise, restraining such person, his or its officers, agents, employees, and representatives from further violation of such section or of such rule, regulation, requirement, or order; and enjoining upon it or them obedience thereto. A copy of any application for relief filed pursuant to this paragraph shall be served upon the Commission and a certificate of such service shall appear in such application. The Commission may appear as of right in any such action. The party who or which prevails in any such action may, in the discretion of the court, recover reasonable attorney's fees to be fixed by the court, in addition to any costs allowable under the Federal Rules of Civil Procedure, and the plaintiff instituting such action shall be required to give security, in such sum as the court deems proper, to protect the interests of the party or parties against whom any temporary restraining order, temporary injunctive, or other process is issued should it later be proven unwarranted by the facts and circumstances.

(3) In any action brought under subsection (b)(2) of this section, the Commission may notify the district court of the United States in which such action is pending that it intends to consider the matter in a proceeding before the Commission. Upon the filing of such a notice the court shall stay further action pending disposition of the proceeding before the Commission.

(h) Any motor carrier, broker, or lessor, or other person, or any officer, agent, employee, or representative thereof, who shall fail or refuse to keep, preserve, or forward any account, record, or memorandum in the substance, form, or manner prescribed in this part or in any rule, order, or regulation prescribed under this part; or who shall fail or refuse to comply with any requirement of this part with respect to the filing with this Commission or with any agency, office, or representative of the Commission, as prescribed by the Commission, any annual, periodical, or special report, or other report, tariff, schedule, contract, document, or data or with any rule, order, or regulation prescribed with respect to such filing; or who shall fail or refuse to make full, true, or correct answer to any question required by the Commission to be made under the provisions of this part, [shall forfeit to the United States the sum of $100 for each such offense, and, in case of a continuing violation, not to exceed $50] *or who shall fail or refuse to comply with the provisions of section 203(c) or section 206(a)(1) or section 209(a)(1) shall forfeit to the United States not to exceed $500 for each such offense, and in case of a continuing violation not to exceed $250* for each additional day during which such failure or refusal shall continue. All forfeitures provided for in this paragraph shall be payable into the Treasury of the United States and shall be recoverable in a civil suit in the name of the United States, brought in the district where the motor carrier or broker has its principal office, or in any district in which such motor carrier or broker was, at the time of the offense, authorized by this Commission, or by this part, to engage in operation as such motor carrier or broker; or in any district where such forfeiture may accrue; or in the district where the offender is found. All process in any such case may be served in the judicial district whereof such offender is an inhabitant or wherever he may be found. It shall be the duty of the various district attorneys under the direction of the Attorney General of the United States to prosecute for the recovery of such forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

SEC. 406a. (1) All actions at law by freight forwarders subject to this part for the recovery of their charges, or any part thereof, shall be begun within three years from the time the cause for action accrues, and not after.

(2) For *recovery of reparations, action at law shall be begun against freight forwarders subject to this part within two years from the time the cause of action accrues, and not after, and for* recovery of overcharges, action at law shall be begun against freight forwarders subject to this part within three years from the time the cause of action accrues, and not after, subject to paragraph (3) of this section, except that if claim for the overcharge has been presented in writing to the freight forwarder within the three-year period of limitation said period shall be extended to include six months from the time notice in writing is given by the freight forwarder to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

(3) If on or before expiration of the three-year period of limitation in paragraph (2) a freight forwarder subject to this part begins action under paragraph (1) for recovery of charges in respect of the same service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the freight forwarder.

(4) The cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the freight forwarder, and not after.

(5) The term "reparations" as used in this section means damages resulting from charges for transportation services to the extent that the Commission, upon complaint made as provided in section 406 of this part, finds them to have been unjust and unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial.

[(5)] *(6)* The term "overcharges" as used in this section shall be deemed to mean charges for service in excess of those applicable thereto under the tariffs lawfully on file with the Commission.

[(6)] *(7)* The provisions of this section shall apply only to cases in which the cause of action may accrue after the date of the enactment of this section.

[(7)] *(8)* The provisions of this section 406a shall extend to and embrace all transportation of property for or on behalf of the United States in connection with any action brought before any court by or against carriers subject to this part: *Provided, however,* That with respect to such transportation of property for or on behalf of the United States, the periods of limitation herein provided shall be extended to include three years from the date of (A) payment of charges for the transportation involved, or (B) subsequent refund for overpayment of such charges, or (C) deduction made under section 322 of the Transportation Act of 1940 (49 U.S.C. 66), whichever is later.

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